# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 4076 of 2005

**For Approval and Signature:**

**HON'BLE MR.JUSTICE A.M.KAPADIA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SHREE SAGAR STEVEDORES - Petitioner(s)**

**Versus**

**SHIVAM ENGINEERS & SHIPWRIGHTS PVT. LTD. - Respondent(s)**

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**Appearance :**

MR HARSHIT S TOLIA for Petitioner No(s).: 1.

MR RS SANJANWALA for Respondent No(s).: 1.
MEENA VYAS for Respondent No(s).: 1.

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**CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA**

**Date : 27/07/2005**

**ORAL JUDGMENT**

1. Rule. Mr. RS Sanjanwala, learned advocate appears and waives service of notice of rule on behalf of the respondent.

2. Instant petition under Article 227 of the Constitution is filed

against the order dated 19.1.2005 recorded below Ex.22 in Special Civil Suit No.67 of 2004 by the learned Civil Judge (S.D.)., Bhavnagar by which the application filed by the petitioner seeking time to file reply against Ex.14 filed by the respondent has been rejected.

3. Having heard Mr. HS Tolia, learned advocate for the petitioner and Mr. RS Sanjanwala, learned advocate for the respondent and having perused the impugned order, it is seen that the petitioner has filed Special Civil Suit No.67 of 2004 against the respondent for recovery of Rs.9,23,520/- towards the damages. In the said suit, the respondent filed Ex.14 praying that in view of the arbitration clause, the suit filed by the petitioner is not maintainable. The petitioner filed Ex.22 seeking adjournment to file written objections against Ex.14 which came to be rejected. The learned trial Judge has assigned the reason that the grounds shown by the petitioner seeking adjournment are not genuine and therefore rejected the application Ex.22.

4. According to this Court, the reason assigned by the trial court for rejecting the application Ex.22 is erroneous and the petitioner must be given a change to file written statement. Therefore, the impugned order deserves to be quashed and set aside by allowing this petition.

5. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 19.1.2005 recorded below application Ex.22 in Special Civil Suit No.67 of 2004 by the learned Civil Judge (SD) Bhavnagar is hereby quashed and set aside the result of which is that application Ex.22 is allowed. The petitioner is permitted to file written objections against Ex.14. Mr. Tolia, learned advocate for the petitioner, states that he will file written objections against

Ex.14 on or before 17.8.2005. On the petitioner filing the written objections, the learned trial Judge shall proceed with the hearing of Ex.14 at the earliest.

6. Rule is made absolute to the aforesaid extent. D.S. is permitted.

(A.M. Kapadia, J.)

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